

CASE SUMMARY

Supreme Court dismisses Ms Sisson's applications for leave to appeal.

Decision date: 12-July-2021

CSUM 21/08

CASE

**Chesterfields Preschools Ltd (in liq) v Commissioner of Inland Revenue [2021]
NZSC 83**

LEGISLATIVE REFERENCES

Senior Courts Act 2016, s 74(2)(a), (b) and (c)
Supreme Court Act 2003, s 13(2)(a) and (b)

LEGAL TERMS

application for leave to appeal, general or public importance, miscarriage in relation to civil appeals

Summary

This was an unsuccessful attempt by Ms Sisson for leave to appeal three Court of Appeal decisions which collectively dismissed 11 appeals against judgments of the High Court. *Chesterfields Preschools Ltd (in liq) v Commissioner of Inland Revenue* [2020] NZCA 686 (Miller, Venning and Katz JJ) [Second liquidation appeal judgment]; *Sisson v Chesterfields Preschools Ltd (in liq)* [2020] NZCA 687 (Miller, Venning and Katz JJ) [Vesting orders judgment]; and *Sisson v Chesterfields Preschools Ltd (in liq)* [2020] NZCA 689 (Miller, Venning and Katz JJ) [Bankruptcy judgment].

The three Court of Appeal judgments relate to the following: (1) the liquidation of Chesterfields Preschools Ltd (“CPL”); (2) the vesting of property in CPL; and (3) Ms Sisson’s personal bankruptcy.

The primary focus of the applications concerns the liquidation of CPL. The Supreme Court held an oral hearing directed at Ms Sisson’s case that if the tax debt is correctly calculated, CPL is not insolvent.

Impact

No impact. The issues arising are unique. They reflect both the particular litigation history and the particular facts of this case. No question of general or public importance or of commercial significance accordingly arises.

Facts

CPL operated a preschool business. It was one of a number of business entities associated with Ms Sisson and Mr Hampton. In April 2004, the Commissioner served a statutory demand on CPL for a debt of \$620,545.94 comprising unpaid tax, late payment penalties and interest. CPL applied to set aside the demand, disputing the amount demanded. A range of related litigation followed, before CPL was eventually put into liquidation on 6 October 2015 (the first liquidation order).

The related litigation in the initial period included two judicial review proceedings. Further, in May 2008, CPL and associated entities filed a statement of claim alleging misfeasance in public office by the Attorney-General, the Commissioner and various other officers. The claim was stayed until repleaded by a lawyer holding a current practising certificate and leave was granted by the High Court (the misfeasance claim).

Ms Sisson, a director of CPL, was joined as a party to the liquidation proceedings to enable her to pursue an appeal. After a partially successful appeal to the Court of Appeal from the first liquidation order, the Supreme Court ultimately set the first liquidation order aside by consent on 23 November 2017 and the matter was remitted to the High Court for rehearing.

On 15 December 2017, CPL was put into interim liquidation. Then, on 26 February 2019, CPL was once more put into liquidation by Osborne J in the High Court (the second liquidation order). Ms Sisson unsuccessfully appealed against that second liquidation order to the Court of Appeal (the second liquidation appeal judgment).

Issues

Whether the approach taken by the Court of Appeal to the calculation of the tax debt gives rise to the appearance of a miscarriage of justice in the civil sense such that it is in the interests of justice for the Court to hear the proposed appeal

Decision

The Liquidation of CPL: SC 12/2021

The Supreme Court saw no appearance of a miscarriage of justice in the Court of Appeal's approach and accordingly dismissed the application for leave to appeal in relation to the liquidation order.

The Court summarised Ms Sisson's case as being if the debt was properly calculated there would be a "modest balance" left to pay in the situation where CPL has "a substantial unencumbered property asset" to draw on. She developed this by arguing:

- the calculation does not comply with the requirements of the earlier judgments in the context of the taxpayers' largely successful judicial review litigation;
- the Commissioner misapplied the ordering rules; and
- the Commissioner's approach breached an arrangement agreed between Mr Hampton and the IRD (the Aronsen arrangement).

The Court stated that whether there is an appearance of a miscarriage of justice really turns on whether anything raised by Ms Sisson suggests that the Court of Appeal was wrong in its interpretation of the requirements for the tax calculation set out in that Court's earlier 2010 judgment.

The Supreme Court found that to the extent Ms Sisson challenges the appropriateness of the 15 per cent reduction, that argument has no prospect of success.

The Supreme Court also dismissed Ms Sisson's argument that the liquidation order should have awaited the outcome of misfeasance proceedings as it was satisfied the misfeasance proceedings has insufficient prospects to warrant leave.

Vesting orders: SC 17/2021

The Supreme Court dismissed Ms Sisson's application for leave to appeal the vesting orders as it saw no apparent error in the Court of Appeal's assessment of these matters.

The Supreme Court also noted that to the extent Ms Sisson's arguments reflect a concern about the costs orders, there are insufficient prospects of success to warrant a grant of leave on this basis.

Bankruptcy: SC 18/2021

This application was also dismissed. The Supreme Court noted that Ms Sisson accepts, as the Court of Appeal held, that her application regarding the bankruptcy "rests entirely on the fate of the ... application for leave to appeal the liquidation judgment". As leave to appeal has not been granted in relation to the liquidation judgment, the Supreme Court found it need not consider this application further. The criteria for leave to appeal are not met.

About this document

These are brief case summaries, prepared by Inland Revenue, of decisions made by the Taxation Review Authority, the District Court, the High Court, the Court of Appeal or the Supreme Court in matters involving the Revenue Acts. For Taxation Review Authority matters, names have been anonymized. The findings of the court described in a case summary will no longer represent current law where the matter has been successfully appealed or subsequent amended legislation has been enacted.